

REMARKS

Reconsideration of this application as amended is respectfully requested.

In the Office Action, claims 1-19 and 34-36 were pending and rejected. In this response, no claim has been canceled or amended. No new matter has been added. Applicants reserve all rights with respect to the application of the doctrine of equivalents.

The claims 1-19 and 34-36 were rejected under 35 U.S.C. 112, first and second paragraphs. Specifically, the Office Action rejected the amendments submitted in a previous response because it contains allegedly new matter. Applicants respectfully disagree.

Specifically, independent claims 1 and 35-36 include limitations that are fully supported by the specification and drawings, such as, for example, Fig. 3C; the last paragraph of page 21 and the second paragraph of page 22. Thus, the currently pending claims are fully supported by the specification and the drawings of the present application.

Claims 1-17 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,794,207 of Walker et al. ("the Walker '207 patent") in view of U.S. Patent No. 6,415,270 of Rackson et al. ("Rackson") and U.S. Patent No. 6,108,639 of Walker et al. ("the Walker '639 patent"). Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over the Walker '639 patent in view of the alleged Official Notice.

It is respectfully submitted that the pending claims 1-19 and 34-36 as amended include limitations that are not disclosed by the cited references, individually or in combination.

Specifically, independent claim 1 as amended recites as follows:

1. A computer implemented method of performing electronic commerce, said computer implemented method comprising:  
listing a set of available products to a set of consumers via a Web page of a Web server for online auction;

accepting a request for a specific product from a particular consumer via the Web page over a network;  
accepting a reserve price for said specific product from said particular consumer, said reserve price comprising a price acceptable to said particular consumer;  
distributing said request for said specific product and said reserve price to a set of sellers over the network;  
accepting at most one offer from each said seller in said set of sellers, each said offer comprising an offer price specifying a price at which an associated seller will sell said specific product, said accepting occurring for a predetermined time period or until an offer having an offer price less than or equal to said reserve price is received;  
if there is only one offer having an offer price less than or equal to the reserve price, consummating, without intervention from the consumer, a transaction with said offer having an offer price less than or equal to said reserve price if said offer having an offer price less than or equal to the reserve price is received;  
if there are multiple offers having an offer price less than or equal to the reserve price, presenting to the consumer the multiple offers sorted in a predetermined order to allow the consumer to select one offer from the multiple offers;  
consummating a transaction with an offer selected by the consumer if the consumer selects from the multiple offers; and  
consummating a transaction with an offer having a lowest price from the multiple offers if the consumer does not select from the multiple offers.

(Emphasis added)

Independent claim 1 includes limitations that during the auction, if there are multiple offers having an offer price less than or equal to the reserve price (specified by the consumer), presenting to the consumer the multiple offers sorted in a predetermined order to allow the consumer to select one offer from the multiple offers. If the consumer selects one offer from the multiple offers, consummating a transaction with an offer selected by the consumer. If the consumer does not select from the multiple offers, consummating a transaction with an offer having a lowest price from the multiple offers. It is respectfully submitted that the above limitations are absent from the cited references, individually or in combination.

In contrast, the Walker '639 patent is related to a normal or forward auction rather than a reverse auction, where a seller lists a product for auction and multiple buyers bid for the product listed by the seller. Specifically, the Walker '639 patent states:

"A collectible conditional purchase offer (CPO) management system is disclosed for receiving and processing individual CPOs from buyers for one or more collectibles, such as coins, stamps, art prints, comic books, baseball cards, jewelry, or other used or secondary market goods. The collectible CPO management system processes each received CPO to determine whether one or more sellers are willing to accept a given collectible CPO. If a seller accepts a given CPO, and ultimately delivers goods complying with the buyer's CPO, the buyer is bound on behalf of the accepting seller, to form a legally binding contract. The CPO is guaranteed, for example, by a general-purpose account, such as a credit or debit account."

(the Walker '639 patent, Abstract, emphasis added).

Thus, the auctions conducted by Walker '639 patent and the present application are completely different. Here, in the Walker '639 patent, multiple buyers bid for an item for auction listed by a seller, if the seller accepts the offer, there is a contract existed.

In contrast, claim 1 of present application includes a buyer to list an item wanted to be purchased and multiple seller bid for the price for selling the item asked by the buyer. The buyer has an option to select an offer from multiple sellers if there are multiple offers available. Once the buyer accepts an offer from one of the seller, there would be a contract. Therefore, the Walker '639 patent and the present application are solving significantly different problems and their approaches are significantly different.

In the Office Action, it states:

"Note: The acceptance of CPO by the seller corresponds to an offer from seller at the reserve price, and also col. 19, lines 13-21, 30-54 and Figs. 10-11 teach that once a seller's offer is received in binding a buyer's CPO the transaction is consummated without the intervention of the consumer."

(7/11/2005 Office Action, page 11, emphasis added).

It is respectfully submitted that there is no equivalence herein. In the Walker '639 patent, it is the seller's final option to bind the contract. In contrast, in the present invention as claimed, it is the buyer's decision to bind a contract with a seller. It is respectfully submitted that the interpretation suggested by the Office Action can only be found based on the impermissible hindsight of the present application.

In addition, the cited references always select the offer having the lowest price if there are multiple offers that are below or equal to the prices in the CPO. That is, if there are multiple offers that satisfy the price set in the CPO, the system of the Walker '639 patent assumes that the purchaser would select the offer having, for example, the lowest price without prompting the purchaser to select in such a situation (see col. 11, lines 13 to 32 of the Walker '639 patent).

Further, although Rackson mentioned a term of "reverse auction", it still fails to disclose the limitations set forth above. Specifically, none of the cited references, individually or in combination, discloses or suggests the limitations of if there are multiple offers having an offer price less than or equal to the reserve price, presenting to the consumer the multiple offers sorted in a predetermined order to allow the consumer to select one offer from the multiple offers, consummating a transaction with an offer selected by the consumer if the consumer selects from the multiple offers, and consummating a transaction with an offer having a lowest price from the multiple offers if the consumer does not select from the multiple offers.

In order to render a claim obvious, each and every limitations of the claim must be taught by the cited references, individually or in combination. It is respectfully submitted that none of the cited references, individually or in combination, discloses or suggests the limitations set forth above.

It is respectfully submitted that there is no disclosure or suggestion within these cited references to combine with each other. It would be impermissible hindsight based on applicants' own disclosure to make such a combination. Even if they were combined, such a combination still lacks the limitations set forth above. Therefore, it is respectfully submitted that independent claim 1 is patentable over the cited references.

Similarly, independent claim 35 and 36 include limitations similar to those recited in claim 1. Thus, for the reasons similar to those discussed above, it is respectfully submitted that claims 35-36 are patentable over the cited references.

Given that the rest of the claims depend from one of the above independent claims, for at least the reasons similar to those set forth above, it is respectfully submitted that the rest of the claims are patentable over the cited references.

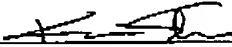
In view of the foregoing, applicants respectfully submit the present application is now in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call the undersigned attorney at (408) 720-8300.

Please charge Deposit Account No. 02-2666 for any shortage of fees in connection with this response.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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Kevin G. Shao  
Attorney for Applicant  
Reg. No. 45,095

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, CA 90025-1026  
(408) 720-8300